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SUPREME COURT OF THE UNITED STATES

October Term of 1978

Case No. 78-1482

ELMER L. MEYERS,

Appellant,

v.

CLAYTON CHILCOTE,

Appellee.

MOTION TO DISMISS APPEAL

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This is an attempted appeal from a decision of the Ohio Supreme Court refusing to take jurisdiction of an appeal from the Ohio First District Court of Appeals. The appellant's action does not contest the validity of any treaty or statute of the United States or a state statute and therefore the appeal jurisdiction of this court does not extend to an action of this nature. The decision below is reviewable, if at all, only by writ of certiorari. 28 USC Section 1257. Accordingly, the appeal should be dismissed and, treating the papers as an application for a writ of certiorari, the writ should be denied.

This case involves a situation which has already consumed more time and expense than can be justified by the circumstances. The appellant is an individual who admittedly issued a corporate check knowing that the corporation was insolvent. The corporate check was cashed at the appellee's place of business and the check was subsequently dishonored. When it appeared that because of the mis-

conduct of the appellant, the appellee was going to be required to bear the loss of the bad check, the appellee promptly notified the authorities who preferred criminal charges against the appellant. Thereafter, on the eve of the trial on the criminal charges, the appellant made restitution and the criminal charges then pending were dismissed. Rather than obtain legal advice on the matter, the appellant, acting as his own attorney, then filed a malicious prosecution action against the appellee. Due to the appellant's failure to appear at regularly scheduled court hearings on the case, the appellant's action was dismissed for want of prosecution pursuant to Ohio Civil Rule 41 (B). Despite notification that his case was being dismissed for failure to prosecute, the appellant took absolutely no action and had no contact with the court until a year later when he filed a Motion for Relief from Judgment pursuant to Ohio Civil Rule 60. The criteria for granting a Motion for Relief from Judgment under Rule 60 (B) of the Ohio Rules of Civil Procedure were set out by the Ohio Supreme Court in *GTE Automatic Electric, Inc.* v. *Arc Industries, Inc.*, 47 O.S.2d 146, 351 N.E.2d 113 (1976).

> "To prevail on a motion brought under Civil Rule 60 (B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civil Rule 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civil Rule 60 (B) (1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken."

In ruling upon the appellant's Motion for Relief from Judgment, the trial court specifically found that the Motion was not filed within a reasonable time and further found that even if the appellant's Motion were granted, he

would not have a meritorious claim to present. These determinations were set forth in the Entry overruling the appellant's Motion to Strike or Relief from Judgment.

The proceedings in the trial court were subsequently reviewed on appeal by the Ohio First District Court of Appeals and the judgment of the trial court was affirmed. Thereafter, the appellant's Motion for Certification to the Ohio Supreme Court was denied.

The appellee would submit that this case involves no substantial federal question. While the appellant claims a denial of his right to due process under the law, this is a contention which is forwarded by many parties who have been the recipient of an unfavorable result in a legal action. However, this appellant did have the benefit of a full hearing on his Motion for Relief from Judgment and also had the benefit of a higher court's review of the full case and proceedings therein. In addition, it is clear that the questions potentially involved in this case are so unsubstantial as not to need further argument. Under the circumstances, there is plainly no need for further review by this court.

For all of the foregoing reasons, appellee moves that this appeal be dismissed.

Respectfully submitted,

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